

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANGELA BENCEBI NAZARIO,		:	
	Plaintiff,	:	21 Civ. 10663 (PAE)
-v-		:	(RWL)
		:	
KILOLO KIJAKAZI,		:	<u>OPINION AND ORDER</u>
	Defendant.	:	
		:	
-----X		:	

PAUL A. ENGELMAYER, District Judge:

Plaintiff Angela Bencebi Nazario (“Nazario”), brings this action under the Social Security Act, 42 U.S.C. § 405(g), seeking judicial review of a final decision of the Commissioner of Social Security (the “Commissioner”) that Nazario is not entitled to disability insurance benefits for the period from July 1, 2012 to December 3, 2013. Nazario has moved for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, asking the Court to reverse and remand the Commissioner’s decision solely for a calculation and award of benefits for the relevant period or to, alternatively, remand for a new hearing. The Commissioner has cross-moved for judgment on the pleadings, asking the Court to affirm the Commissioner’s decision.

Before the Court is the February 9, 2023 Report and Recommendation of the Hon. Robert W. Lehrburger, United States Magistrate Judge, recommending that the Court grant plaintiff’s motion and deny the Commissioner’s motion. Dkt. 24 (the “Report”). For the following reasons, the Court adopts the Report in full.

DISCUSSION

“A district court may set aside the Commissioner’s determination that a claimant is not disabled only if the factual findings are not supported by ‘substantial evidence’ or if the decision is based on legal error.” *Burgess v. Astrue*, 537 F.3d 117, 127 (2d Cir. 2008) (citation omitted); *see also* 42 U.S.C. § 405(g). “Substantial evidence means more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Burgess*, 537 F.3d at 127 (citation omitted).


In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

Because neither Nazario nor the Commissioner has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Lehrburger’s exceptionally thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. The Report explicitly states that failure to object within 14 days will result in a waiver of objections and will preclude appellate review. Report at 57. Accordingly, the failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Hum. Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the reasons articulated in the Report, the Court denies plaintiff's motion and grants the Commissioner's cross-motion. The Clerk of Court is directed to terminate the motions pending at docket numbers 18 and 21, and to close this case.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: February 24, 2023
New York, New York